

June 19, 2003

Alan Mitchell
Minnesota Environmental Quality Board (EQB)
Centennial Office Building - 3rd Floor
658 Cedar Street
St. Paul, MN 55155

Dear Mr. Mitchell:

The Minnesota Public Utilities Commission (Commission) offers the following comments on the EQB's Proposed Permanent Rules Governing Environmental Review of Electric Power Generation Plants and High Voltage Transmission Lines in Proceedings before the Public Utilities Commission, which were published in Volume 27 of the *State Register*, Issue 47, Monday, May 19, 2003.

In general, the Commission is very supportive of the approach taken by the EQB in its amendments to Chapter 4410. However, the Commission continues to have concerns that some of the subparts in the proposed amendments could cause confusion and/or lengthen the decision-making process. In the paragraphs which follow, the Commission identifies those specific areas of concern.

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Part 4410.7030 PROCESS FOR PREPARATION OF ENVIRONMENTAL REPORT.

While it does not oppose the notice provisions in subpart one, the Commission notes that for many projects it may be difficult for the EQB to identify persons who "own property or reside in the area of the proposed project."

The Commission is uncomfortable with some of the proposed language of subparts six through 10. Because of the particular importance of those subparts, the Commission will discuss them in some detail.

First, it is imperative that the alternatives considered in the environmental report by the EQB closely track those identified in the early phases of the certificate of need process. While the last sentence in subpart six appears to ensure the inclusion of alternatives considered significant by the Commission, the chair of the EQB could add other alternatives. To ensure equal treatment of alternatives, it may be necessary for the Commission to require an applicant for a certificate of need to supplement its application. While this can be done, the time frame in the proposed rules for the chair's decision would, under Commission rules and procedures, extend beyond the date of the meeting at which the Commission would consider the substantial completeness of the certificate of need application. This is a potential problem that may be less significant in practice than in theory. Nevertheless, the Commission cannot easily accept new rules and procedures

that would negatively impact its ability to promote regulatory efficiency and to comply with the six-month advisory deadline for the certificate of need decision.

Second, as the Commission has maintained throughout discussions with the EQB staff, it should have a voice in the schedule for completion of the environmental report. The Commission understands the EQB staff's argument that the responsible governmental unit typically has been the entity to determine the timing of an environmental review document. However, the Commission also knows that it alone will be held responsible for complying with the statutory deadlines for completion of the need and biennial transmission processes. The EQB should be very reluctant to adopt rules which have the practical effect of impeding the Commission's ability to meet those deadlines. Throughout the history of the need process, the timing of submission of testimony and other documents and the timing of public hearings has been discussed by the various parties before an administrative law judge (ALJ), who has determined a reasonable schedule after hearing from the parties and Commission staff. Subpart seven clearly interferes with that long-standing practice.

Third, the phrase in subpart nine that the environmental report is to be completed "within four months of submission of the information required by part 4410.7025" is unclear. The Commission's interpretation is that the filing dates of the certificate of need application or the transmission planning report would start the clock. However, to prevent other interpretations, the Commission suggests adding the phrase "subpart one or two" at the end of that sentence.

Fourth, the Commission agrees in principle that the period for completion of the environmental report can be lengthened by the amount of time required for applicants to complete the initiating documents identified in subparts one and two. However, the EQB and its staff should understand that Commission rules indicate the clock would be restarted on the date the applicant submits the information completing the initiating filing to the Commission's satisfaction, not the date the Commission holds its meeting or issues its order.

Fifth, the Commission is troubled by the sentence in subpart 10 that implies the EQB need only submit one copy of the environmental report to the Commission. Standard practice in the need proceeding has been for parties to comply with the service requirements set by the administrative law judge. Never has an ALJ prescribed a distribution that failed to provide copies for each commissioner and staff member involved in the proceeding, up to the maximum prescribed by Commission rules. Subpart 10 should be revised to require the EQB to comply with the requirements set by the Commission (or the ALJ, if the proceeding is a contested case). Alternatively, a sentence could be added that the Commission may request additional copies, up to the number specified by Minnesota Rules, part 7829.0400, subp. 2. All certificate of need proceedings to date have been held before an ALJ. While there is as yet no experience for certifications requested under the new biennial transmission planning process, the Commission expects that contested case proceedings will be ordered for some projects.

Part 4410.7035 CONTENT OF ENVIRONMENTAL REPORT.

Subpart two includes several requirements related to the use of power plants. The Commission strongly supports the inclusion of the impacts identified in items A through J. However, item A calls for "emissions at the maximum rated capacity of the project," while item E calls for "the amount (of fuel) required annually," which implies running the unit at more of an average capacity. When the environmental reports are prepared, the EQB staff will have to be very careful in specifying what is being calculated, to avoid confusion and possible misuse of the data.

Part 4410.7040 AGENCY ASSISTANCE.

The Commission strongly agrees with what it understands to be the intent of this rule. However, clarifying language should be added to limit the scope of this rule to other EQB member agencies.

Part 4410.7050 ENVIRONMENTAL REPORT TO ACCOMPANY PROJECT.

Consistent with the comments made earlier, subpart one should be changed to remove any implication that only one copy need be provided to the Commission.

The Commission is uncomfortable with the phrase "address the issues identified by the chair." The phrase "sufficiently address the alternatives and impacts necessary to render its decision" would be more consistent with the Commission's responsibilities under the statutes.

Part 4410.7060 JOINT PROCEEDING.

The Commission and its staff are comfortable with the general thrust of subpart two. However, the rules should make provision for providing written assurance to the Commission that "the applicant agrees to the additional time."

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The Commission recognizes that tradeoffs frequently are necessary in a rulemaking such as this one. For example, concerns about the effects on certification time lines need to be balanced against the likely improvement in the quality of the record. Thus, while the Commission believes the approach outlined in the proposed rules offers the promise of improved records and decisions, it also places a premium on mutual respect and cooperation between the EQB and the Commission. As a result, after the rules are adopted by the EQB, the Commission will not be timid in demanding adherence to deadlines and in requesting new rulemaking if the process created by the proposed rules does not work well.

The Commission does not request a public hearing on the proposed rules. However, the Commission may want to address the Board at the time of rule adoption, especially if

proposed changes by other entities would cause the proposed rules to become less workable and acceptable.

Thank you for the opportunity to comment.

Sincerely,

Burl W. Haar
Executive Secretary